IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4872 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

LAXMIKANT PRANSHANKAR SHUKLA

Versus

CHIEF EXECUTIVE

Appearance:

PARTY-IN-PERSON for Petitioner

MR DEEPAK V PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 11/12/96

ORAL JUDGEMENT

1. The petitioner who is appearing as party-in-person has voiced his grievance before this Court that the judgment and order passed by the Presiding Officer, Labour Court, Ahmedabad, in respect of Recovery Application No. 2619 of 1989 is illegal and bad in law

and that he is entitled to annual increment or performance increment which ought to have been released to him till he superannuated in the year 1989. He was employed by Lalbhai Group Rural Development Fund and was admittedly appointed on the project initially for a period of two and half months on a payment of project assignment and thereafter on the post of Special Officer Information and Documentation on salary of Rs.1,000/- per month and other terms and conditions which included payment of performance increment every year. He was confirmed w.e.f. 16th April, 1980 and was posted as Research Associate thereafter and from 27th July, 1981 he was taken on the project assignment at a monthly salary of Rs. 1,200/- and thereafter he was appointed as Coordinator on salary of Rs.1,500/- per month from 1.7.1983. These are the admitted facts as can be seen from the affidavit-in-reply. On superannuation, his service came to an end i.e. 31st of March, 1989 and he was simply paid a month salary as notice pay plus gratuity, service security deposit together with interest. He was not paid or released the performance increment since last three years and his claim for performance increment was negatived on the ground that the aforesaid Trust has passed a Resolution in its private meeting whereby it has decided not to issue performance increment to the employees who were working beyond the superannuation age. The performance increment claimed by the workman works out to Rs. 19,963/- and the Recovery Application filed in that behalf under Section 33(c)(2) of the Industrial Disputes Act, 1947 unfortunately came to be rejected on 1st of March, 1995 against which the present Special Civil Application is directed.

2. The respondent has already stated that as a policy decision taken by the Trustees in the meeting held on 4th August, 1986 in regard to performance related yearly increment, it was decided by the Board that the persons who have crossed the age of 65 years should be paid the present salary and should not be paid the performance increment. Such decision was unilaterally taken by the trustees on 9th of April, 1986 which was allegedly conveyed to the employee, but the procedure which is required to be followed under Section 9-A of the I.D. Act for change in condition of service was admittedly not followed. When a vital decision is taken to freeze the salary and to deny the performance increment to an employee, which has the effect of changing his service condition, the procedure of Section 9-A of the Industrial Disputes Act, 1947 is required to be followed. Unfortunately, the procedure which is

required to be followed was not followed by the trust and unilateral decision was passed. With the result, the employee was denied the performance increment between 1986 and 1989.

3. The respondent's only reply to the aforesaid grievance of the petitioner is that since it was unilaterally decided by the Trustees to freeze the wage and to stop to pay the performance increment to the employees beyond the age of 65 years, they stopped paying performance increment even to the petitioner beyond 1986. This defence of the employer can hardly be accepted especially when the law on the subject is very clear. In fact, when a decision or resolution adverse to the employee is passed so as to reduce his salary by stopping the performance increment, provision of Section 9A is required to be followed which is not followed by the trust in question admittedly in the present case. The unilateral resolution is passed deciding to freeze the salary and not to release performance increment to the employees who have completed 65 years of service. Unfortunately, it is a decision which was not in accordance with law and was not binding on the employee. The employee, in fact, served the institution on the same terms and conditions on which he was employed and in fact he was paid the performance increment every year till 1986. For no earthly reason to stop the performance increment and, therefore, he has made grievance before this Court that he is entitled to get performance increment every year and the same is unfortunately denied to him. The Labour Court has, unfortunately in a Recovery Application, taken too liberal view of the matter and has circumspected its discretion and authority to the unilateral decision passed by the trust that the employee who has crossed 65 years of service was not entitled to performance increment and he was simply entitled to present salary. The Labour Court has unfortunately failed to see that in fact the provisions of Section 9A of the Industrial Disputes Act, 1947 are enacted for the protection of the workman and the workman cannot be deprived of his settled benefit to the disadvantage by unilateral decision taken by the management. That being the position of law, the Recovery Application, in fact, ought to have been allowed and the workman ought to have been released the performance increment between the aforesaid period which works out to Rs. 19,963/-. However, since much time has lapsed and the employer is harbouring under a wrong impression of law and since it has taken a peculiar plea that it is not an industry but it is a public trust, not bound by the provision of Industrial Disputes Act, 1947, it is upon

found necessary to call upon the workman to accept some lesser amount which the employer has agreed to pay within a period of 10 days from today and the management is directed to pay the amount of Rs. 15,000/- towards performance increment to the workman within ten days from today and the workman has accepted to receive the said amount towards performance increment if paid within 10 days from today by the management.

4. The respondent management is directed to pay Rs. 15,000/- towards performance increment to the workman in lumpsum as full and final settlement of the claim for performance increment and on payment of such amount, the workman will not claim any further amount towards performance increment. The employee is not raising any claim as he has raised in the amended petition and his claim is confined to the aforesaid performance increment which is ordered to be paid by this Court in lumpsum to him.

5. In the result, this Special Civil Application partially succeeds. The respondent - management is directed to pay Rs. 15,000/- (Rupees fifteen thousand only) towards performance increment to the workman within 10 days from today in full and final settlement of his claim for performance increment. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.
